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16 UNITED STATES DISTRICT COURT
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18 NORTHERN DISTRICT OF CALIFORNIA
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20 OAKLAND DIVISION

21 SMITHKLINE BEECHAM CORPORATION,) Case No. 4:07-cv-05702 (CW)
22 d/b/a GLAXOSMITHKLINE,)
23 Plaintiff,) **PLAINTIFF'S NOTICE OF MOTION**
24 vs.) **AND UNOPPOSED MOTION FOR**
25 ABBOTT LABORATORIES,) **LEAVE TO FILE SECOND AMENDED**
Defendant.) **COMPLAINT**

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Judge: Honorable Claudia Wilken
Hearing Date: March 19, 2015
Time: 2:00 p.m.
Location: Courtroom 2 (4th Floor)

1 NOTICE IS HEREBY GIVEN that on March 19, 2015, at 2:00 p.m., or as soon thereafter
 2 as the matter may be heard in Courtroom 2 of the above-referenced Court located at 1301 Clay
 3 Street, Oakland, 94612, Plaintiff GlaxoSmithKline (GSK) will, and hereby does, move for leave to
 4 amend its Complaint. This motion is noticed for March 19, 2015, per party agreement and to
 5 comply with Local Rule 7-2(b); however, GSK requests that the Court in its discretion rule on the
 6 motion without a hearing, per Local Rule 7-1(b). Counsel for Abbott has informed counsel for
 7 GSK that it does not oppose GSK's request that the Court decide this motion without a hearing.

8 This motion is brought pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure.
 9 Specifically, GSK moves for leave to amend its complaint to eliminate the first and fourth causes
 10 of action identified in its First Amended Complaint. The first cause of action is for violations of
 11 the Sherman Act, and the fourth cause of action is for violations of the North Carolina prohibition
 12 on monopolization, N.C. Gen. Stat. § 75-2.1. GSK does not seek to add any additional facts,
 13 claims, or parties to its complaint or to amend the remaining two causes of action, which are for
 14 breach of contract and for violation of the North Carolina Unfair and Deceptive Trade Practices
 15 Act (UDTPA), N.C. Gen. Stat. § 75.1-1. GSK believes that eliminating the first and fourth causes
 16 of action will streamline the case, and the trial will proceed more efficiently and effectively as a
 17 result.

18 In support of its motion for leave to amend its complaint and pursuant to Civil Local Rule
 19 10-1, GSK includes its Proposed Second Amended Complaint (Exhibit A), Proposed Order
 20 Granting Leave to File Amended Complaint (Exhibit B), and a document comparing GSK's First
 21 Amended Complaint and Proposed Second Amended Complaint (Exhibit C).

22 Counsel for GSK has consulted with counsel for Defendant Abbott Laboratories
 23 ("Abbott"). Counsel for Abbott has informed counsel for GSK that Abbott does not object to the
 24 dismissal of the antitrust claims, while reserving all of its rights and arguments about the
 25 consequences of doing so.

26 **I. GSK SEEKS TO ELIMINATE FEDERAL AND STATE ANTITRUST CLAIMS.**

27 Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, GSK moves for leave to
 28 amend its complaint, as it wishes to dismiss some, but not all, of its claims against Abbott. *Hells*

1 *Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 687 (9th Cir. 2005) (“[W]ithdrawals of
 2 individual claims against a given defendant are governed by Fed. R. Civ. P. 15, which addresses
 3 amendments to pleadings.” (citing *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1392 (9th Cir.
 4 1988)); *see also Gen. Signal Corp. v. MCI Telecommunications Corp.*, 66 F.3d 1500, 1513 (9th
 5 Cir. 1995) (“[W]e have held that Rule 15, not Rule 41, governs the situation when a party
 6 dismisses some, but not all, of its claims.”).

7 Leave to amend pleadings under Rule 15(a)(2) ought to be granted “with extreme
 8 liberality.” *Eminence Capital, L.L.C. v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003); *see*
 9 *also Union Pac. R. Co. v. Nevada Power Co.*, 950 F.2d 1429, 1432 (9th Cir. 1991) (liberal standard
 10 should be applied to amending claims). Here, GSK seeks to amend its complaint to eliminate the
 11 antitrust causes of action (the first and fourth) and to proceed to trial on the breach of good faith
 12 and fair dealing and North Carolina Unfair and Deceptive Trade Practices Act causes of action
 13 (the second and third). GSK believes that amending its complaint in such a manner will
 14 streamline the case, conserve the Court’s and parties’ resources, and result in a more efficient and
 15 effective presentation at trial. Courts frequently permit amendment in similar situations. *See, e.g.*,
 16 *City of New York v. A-1 Jewelry & Pawn, Inc.*, 247 F.R.D. 296, 306-07 (E.D.N.Y. 2007)
 17 (“Because the amendments eliminate claims, they do not require defendants to undertake
 18 additional discovery, or respond to new claims, theories, or facts, nor will the proposed
 19 amendment delay resolution of the dispute.”); *Paglin v. Saztec Int’l, Inc.*, 834 F. Supp. 1184, 1190
 20 (W.D. Mo. 1993) (allowing plaintiff to amend complaint to drop claims in order to “simplify and
 21 focus the issues … and expedite the presentation of evidence” and noting that that any prejudice is
 22 negated by sparing defendant additional “effort and expense … [and] the risk of unfavorable
 23 judgment”); *Allen v. Nat’l Video, Inc.*, 610 F. Supp. 612, 621 (S.D.N.Y. 1985) (allowing plaintiff
 24 to drop claims when “the elements of his cause of action are unchanged, and … all of his theories
 25 are based on the same series of transactions and occurrences with which all parties are fully
 26 familiar”).

27 Courts consider five factors in considering motions to amend, namely: bad faith, undue
 28 delay in the final disposition of the case, prejudice to the opposing party, the futility of

1 amendment, and previous amendments to the pleadings. *Foman v. Davis*, 371 U.S. 178, 182
 2 (1962); *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2004); *see also Hammes Co. Healthcare,*
 3 *LLC v. Tri-City Healthcare Dist.*, No. 09-CV-2324 JLS CAB, 2011 WL 6182423, at *10-11 (S.D.
 4 Cal. Dec. 13, 2011) (applying the liberal standard of Rule 15(a)(2) and granting leave to amend a
 5 complaint eliminating one of the claims). Prejudice is the paramount consideration. *Eminence*
 6 *Capital*, 316 F.3d at 1052.

7 As GSK’s proposed second amended complaint would *narrow* the scope of the retrial,
 8 Abbott will suffer no prejudice through this amendment. This amendment will require no
 9 additional discovery or witnesses, nor will it cause Abbott to incur any additional expense, as GSK
 10 does not seek to amend its other claims. Indeed, GSK’s proposed amended complaint will likely
 11 *reduce* Abbott’s costs, as trial will likely be considerably shorter. *See, e.g., A-1 Jewelry & Pawn,*
 12 *Inc.*, 247 F.R.D. at 306-07 (allowing amendment to eliminate claims because it would not require
 13 additional discovery or undue delay).

14 Similarly, as GSK proposes only to *reduce* the number of issues in dispute at retrial, this
 15 amendment will not cause any delay in the final disposition of the case; the trial will still be
 16 completed within the time set by the court, and will require fewer overall trial days. Granting
 17 GSK leave to amend its complaint will preserve judicial resources. *See Millar v. Bay Area Rapid*
 18 *Transit Dist.*, 236 F. Supp. 2d 1110, 1113 (N.D. Cal. 2002) (citing “impact on judicial economy,
 19 judicial resources and the Court’s ability to manage cases and control its dockets” as reasons to
 20 grant leave to amend a complaint).

21 GSK proposes this amendment in good faith, as a carefully considered decision about its
 22 litigation strategy; there is no attempt to surprise or prejudice Abbott here. There are several
 23 months remaining before trial, and GSK has provided Abbott with notice of its proposed
 24 amendment. Given the “extreme liberality” that the Ninth Circuit uses in granting leave to amend
 25 pleadings, and given that GSK seeks only to *eliminate* causes of action without enlarging the

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1 remaining claims, GSK asks that the Court grant leave to amend its complaint as reflected in its
2 proposed amended complaint (Exhibit A).

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4 Dated: February 27, 2015

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